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Dato' Chang Jong Yu & Ors v Ibaimas Sdn Bhd (in liquidation) (Kuala Ibai Property Sdn Bhd, aggrieved party)

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HIGH COURT (SHAH ALAM) — BA-28PW-15–01 OF 2024
RAJA ROZELA JC
7 JULY 2025

C

Companies and Corporations — Winding up — Liquidators — Applicants sought declaratory and injunctive reliefs against liquidator to nullify Turnkey construction agreement and prevent its implementation — Whether leave of court was required to bring application — Whether court had jurisdiction to grant declaratory and injunctive reliefs sought — Whether application was defective for failure to join aggrieved party as party — Whether Turnkey agreement was liable to be set aside — Whether permanent injunction ought to be granted — Companies Act 2016 ss 461, 482(b), 486(2) & 510

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Ibaimas Sdn Bhd ('the company') was in liquidation. The applicants were contributories or parties with proprietary claims over 33 parcels of land in Kuala Nerus, Terengganu, which were the subject matter of pending litigation in Suit 172 and Suit 166. Despite these ongoing disputes, the liquidator of the company entered into a Turnkey construction agreement with Kuala Ibai Property Sdn Bhd ('KIP') for the development of the lands. The applicants brought this application pursuant to ss 351, 461, 482(b), 486(2) and 510 of the Companies Act 2016 ('the CA 2016') seeking declaratory and injunctive reliefs against the liquidator. The applicants alleged that this agreement was executed without consulting stakeholders or seeking directions from the court, and that it prejudiced their rights. They contended that the liquidator's actions amounted to a breach of duty and sought to restrain the implementation of the agreement. KIP was not named as a party to the application but was served with the cause papers and had filed detailed written submissions in opposition. KIP maintained that it was a bona fide third party and would be adversely affected by the declarations sought. The issues for determination were: (a) whether leave of court was required to bring this application; (b) whether the court had jurisdiction to grant the declaratory and injunctive reliefs sought; (c) whether the application was defective for failure to join KIP as a party; (d) whether the Turnkey agreement was liable to be set aside; and (e) whether a permanent injunction ought to be granted.

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Held, allowing the application:

(1) The applicants were not required to obtain leave under s 486(2) of the CA 2016 before invoking the court's supervisory jurisdiction. The

application was not a substantive claim against the company or the liquidator personally but was premised on the court's inherent supervisory role over liquidators. The applicants were not seeking a fresh cause of action but were calling upon the court to regulate the conduct of its own officer. Accordingly, the procedural objection was rejected (see paras 10–12).

(2) Sections 461, 482(b), 486(2), and 510 of the CA 2016 collectively empowered the court to exercise comprehensive supervisory oversight over liquidation matters. The court had jurisdiction to issue declaratory and injunctive reliefs in appropriate cases. This was especially so where the liquidator's decision was challenged on grounds of illegality, irrationality, or procedural impropriety (see paras 13–14).

(3) KIP was served with the application and supporting cause papers, and it had actively participated in these proceedings by filing a comprehensive submission. KIP was given sufficient notice and a meaningful opportunity to be heard. Therefore, there was no merit in the objection based on non-joinder (see paras 16 & 18).

(4) The liquidator did not furnish any evidence that directions were sought, nor was there consultation with stakeholders. His decision to proceed unilaterally in these circumstances reflected an injudicious exercise of discretion. The liquidator's execution of the Turnkey agreement was irregular and in breach of his statutory obligations under s 486 of the CA 2016. The transaction undermined the integrity of the pending litigation and was prejudicial to the rights of potential beneficiaries of those suits. Therefore, the Turnkey agreement was null, void, and unenforceable (see paras 21–22).

(5) Any steps to implement the Turnkey agreement would be unlawful. It was just and proper to grant a permanent injunction restraining the liquidator from giving effect to the Turnkey agreement. Although KIP was not named as a party to the application, it had been heard and was aware of the implications of the injunctive relief sought. Since no specific wrongdoing was attributed to KIP and it was not compelled to perform or refrain from an act personally, the order would not be made against it. The injunction was directed solely against the liquidator (see paras 24–25).

[Bahasa Malaysia summary

Ibaimas Sdn Bhd ('syarikat') berada dalam pembubaran. Pemohon-pemohon adalah penyumbang atau pihak-pihak yang mempunyai tuntutan hak milik ke atas 33 bidang tanah di Kuala Nerus, Terengganu, yang menjadi subjek perbicaraan yang belum selesai dalam Saman 172 dan Saman 166. Walaupun terdapat pertikaian yang berterusan ini, pelikuidasi syarikat telah memasuki satu perjanjian pembinaan Turnkey dengan Kuala Ibai Property Sdn Bhd

('KIP') untuk pembangunan tanah-tanah tersebut. Pemohon-pemohon telah memfailkan permohonan ini menurut ss 351, 461, 482(b), 486(2) dan 510 Akta Syarikat 2016 ('AS 2016') untuk mendapatkan relif pengisytiharan dan injunksi terhadap pelikuidasi. Pemohon-pemohon mendakwa bahawa perjanjian ini telah dilaksanakan tanpa berunding dengan pihak-pihak berkepentingan atau mendapatkan arahan daripada mahkamah, dan ia menjejaskan hak-hak mereka. Mereka menegaskan bahawa tindakan-tindakan pelikuidasi merupakan pelanggaran kewajipan dan memohon untuk menghalang pelaksanaan perjanjian tersebut. KIP tidak dinamakan sebagai pihak dalam permohonan tersebut tetapi telah diserahkan kertas kausa dan telah memfailkan hujahan bertulis terperinci sebagai bantahan. KIP menegaskan bahawa ia adalah pihak ketiga yang bona fide dan akan terjejas oleh pengisytiharan yang dipohon. Isu-isu untuk penentuan adalah: (a) sama ada kebenaran mahkamah diperlukan untuk membawa permohonan ini; (b) sama ada mahkamah mempunyai bidang kuasa untuk memberikan relif pengisytiharan dan injunksi yang dipohon; (c) sama ada permohonan tersebut cacat kerana kegagalan untuk menjadikan KIP sebagai pihak; (d) sama ada perjanjian Turnkey boleh diketepikan; dan (e) sama ada injunksi kekal patut diberikan.

Diputuskan, membenarkan permohonan:

(1) Pemohon-pemohon tidak dikehendaki untuk mendapatkan kebenaran di bawah s 486(2) AS 2016 sebelum memohon bidang kuasa penyeliaan mahkamah. Permohonan tersebut bukanlah suatu tuntutan substantif terhadap syarikat atau pelikuidasi secara peribadi tetapi adalah berdasarkan peranan penyeliaan sedia ada mahkamah ke atas pelikuidasi. Pemohon-pemohon tidak memohon suatu kausa tindakan baharu tetapi memohon kepada mahkamah untuk mengawal selia kelakuan pegawainya sendiri. Oleh itu, bantahan prosedur ditolak (lihat perenggan 10–12).

(2) Seksyen 461, 482(b), 486(2), dan 510 AS 2016 secara kolektif memperkasakan mahkamah untuk melaksanakan pengawasan penyeliaan menyeluruh ke atas perkara-perkara pembubaran. Mahkamah mempunyai bidang kuasa untuk mengeluarkan relif pengisytiharan dan injunksi dalam kes-kes yang sesuai. Ini adalah terutamanya apabila keputusan pelikuidasi dicabar atas alasan ketidakpatuhan undang-undang, ketidakrasionalan, atau ketidakwajaran prosedur (lihat perenggan 13–14).

(3) KIP telah diserahkan dengan permohonan dan kertas kausa sokongan, dan ia telah mengambil bahagian secara aktif dalam prosiding ini dengan memfailkan penghujahan yang menyeluruh. KIP telah diberikan notis yang mencukupi dan peluang yang bermakna untuk didengar. Oleh itu,

tiada merit dalam bantahan berdasarkan ketakcantuman (lihat perenggan 16 & 18).

(4) Pelikuidasi tidak mengemukakan apa-apa keterangan bahawa arahan telah dipohon, dan juga tiada perundingan dengan pihak-pihak berkepentingan. Keputusannya untuk meneruskan secara unilateral dalam keadaan ini mencerminkan penggunaan budi bicara yang tidak adil. Pelaksanaan perjanjian Turnkey oleh pelikuidasi adalah tidak teratur dan melanggar kewajipan berkanun di bawah s 486 AS 2016. Transaksi tersebut menjejaskan integriti litigasi yang belum selesai dan memudaratkan hak-hak benefisiari berpotensi saman-saman tersebut. Oleh itu, perjanjian Turnkey adalah terbatal, tidak sah, dan tidak boleh dikuatkuasakan (lihat perenggan 21–22).

(5) Sebarang langkah untuk melaksanakan perjanjian Turnkey adalah menyalahi undang-undang. Adalah adil dan wajar untuk memberikan injunksi kekal yang menghalang pelikuidasi daripada memberikan kesan kepada perjanjian Turnkey. Walaupun KIP tidak dinamakan sebagai pihak dalam permohonan tersebut, ia telah didengar dan sedar akan implikasi relif injunksi yang dipohon. Oleh kerana tiada salah laku khusus dikaitkan dengan KIP dan ia tidak dipaksa untuk melaksanakan atau menahan diri daripada sesuatu tindakan secara peribadi, perintah itu tidak akan dibuat terhadapnya. Injunksi itu ditujukan semata-mata terhadap pelikuidasi (lihat perenggan 24–25).]

Cases referred to

Kemacahaya Development Sdn Bhd v Pywatec (M) Sdn Bhd & Anor and another appeal [2022] 5 MLJ 433, CA (folld)

Majlis Bandaraya Petaling Jaya v Digital Viva Sdn Bhd & Anor [2020] MLJU 88, CA (refd)

Legislation referred to

Companies Act 2016 ss 351, 461, 482(b), 486, 486(1)(b), (2), 510, Schedule, Part II, item 13

Ravichandaran Selliah (with Dheenish Thevandran) (S Ravichandaran & Anuar) for the appellant.

Tiew Kelly (with Yap Boon Hau) (Mah-Kamariyah & Philip Koh) for the respondents.

Raja Rozela JC:

INTRODUCTION

[1] This is my judgment in respect of the application by Dato' Chang Jong Yu and four others ('the applicants') vide encl 1. The application is brought

pursuant to ss 351, 461, 482(b), 486(2), and 510 of the Companies Act 2016 ('the CA 2016') seeking declaratory and injunctive reliefs against the liquidator of Ibaimas Sdn Bhd (in liquidation) ('the company'). At the heart of the application is a Turnkey construction agreement dated 28 March 2023 entered into between the liquidator and a third party, Kuala Ibai Property Sdn Bhd ('KIP').

FACTUAL BACKGROUND

[2] The company is in liquidation. The applicants are contributories or parties with proprietary claims over 33 parcels of land in Kuala Nerus, Terengganu, which are the subject matter of pending litigation in Suit 172 and Suit 166. Despite these ongoing disputes, the liquidator entered into a Turnkey construction agreement with KIP for the development of the said lands.

[3] The applicants allege that this agreement was executed without consulting stakeholders or seeking directions from the court, and that it prejudices their rights. They contend that the liquidator's actions amount to a breach of duty and seek to restrain the implementation of the agreement.

[4] KIP is not named as a party to the application but was served with the cause papers and has filed detailed written submissions in opposition. KIP maintains that it is a bona fide third party and would be adversely affected by the declarations sought.

PARTIES' SUBMISSIONS

[5] The applicants contend that the liquidator acted irregularly in entering into the Turnkey agreement without obtaining the court's sanction or consulting interested stakeholders. They emphasise that the land parcels involved are under active litigation, and that the liquidator's decision to enter into a development arrangement during the pendency of those suits was both imprudent and prejudicial.

[6] They argue that the liquidator has not demonstrated how the Turnkey agreement would enhance the value of the estate, benefit creditors, or take into account the disputed nature of the assets. The applicants highlight that KIP is merely a third party with no proprietary interest in the land, and that no prejudice arises to KIP if the liquidator is restrained. The applicants submit that the court has supervisory jurisdiction under ss 461 and 486(2) to review the liquidator's acts and that they are entitled to reliefs by virtue of being contributories.

[7] The liquidator, in response, asserts that he acted within his statutory

authority to preserve and realise company assets. He denies any breach of duty, pointing out that the company is insolvent and that the agreement was made in the interest of the general body of creditors. He contends that the applicants have not established any proprietary interest in the lands and argues that they have no legal basis to interfere with the Turnkey agreement.

[8] KIP appears as an aggrieved party, maintaining that the declarations sought will adversely affect its contractual rights. KIP asserts that it was not implicated in any wrongdoing and that it entered into the Turnkey agreement in good faith.

[9] Issues for determination:

(a) whether leave of court is required to bring this application;

(b) whether the court has jurisdiction to grant the declaratory and injunctive reliefs sought;

(c) whether the application is defective for failure to join KIP as a party;

(d) whether the Turnkey agreement is liable to be set aside; and

(e) whether a permanent injunction ought to be granted.

FINDINGS AND ANALYSIS

Leave of court

[10] The respondent contends that the applicants were required to obtain leave under s 486(2) before invoking the court's supervisory jurisdiction. I disagree.

[11] The application is not a substantive claim against the company or the liquidator personally but is premised on the court's inherent supervisory role over liquidators. As held in *Kemacahaya Development Sdn Bhd v Pywatec (M) Sdn Bhd & Anor and another appeal* [2022] 5 MLJ 433, applications that invoke ss 461 and 486(2) of the CA 2016 do not require prior leave. I adopt that position. The applicants are not seeking a fresh cause of action but are calling upon the court to regulate the conduct of its own officer.

[12] Accordingly, I reject the procedural objection.

Jurisdiction to grant relief

[13] Sections 461, 482(b), 486(2), and 510 of the CA 2016 collectively empower the court to exercise comprehensive supervisory oversight over liquidation matters. Section 486(2) provides that the exercise of the liquidator's

powers is subject to the control of the court, and that any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of such powers. Section 461 confers residual jurisdiction to make any order necessary for the winding up process.

[14] I am satisfied that the court has jurisdiction to issue declaratory and injunctive reliefs in appropriate cases. This is especially so where the liquidator's decision is challenged on grounds of illegality, irrationality, or procedural impropriety.

Non-joinder of KIP

[15] KIP has taken the position that it ought to have been formally named as a party to these proceedings. It submits that the declarations sought by the applicants, if granted, would adversely affect its contractual rights under the Turnkey construction agreement. In its view, the omission to join KIP as a respondent constitutes a denial of due process.

[16] However, it is undisputed that KIP was served with the application and supporting cause papers, and it has actively participated in these proceedings by filing a comprehensive submission. KIP has therefore been given a full and fair opportunity to be heard.

[17] The law does not prohibit the court from making declaratory orders that may indirectly affect a third party, provided that procedural fairness is observed. This principle was affirmed in *Majlis Bandaraya Petaling Jaya v Digital Viva Sdn Bhd & Anor* [2020] MLJU 88.

[18] In the present case, I am satisfied that KIP was given sufficient notice and a meaningful opportunity to be heard. I therefore find no merit in the objection based on non-joinder.

Validity of the Turnkey agreement

[19] The key relief sought by the applicants is a declaration that the Turnkey agreement is null, void, and unenforceable. In support of this, the applicants point to the pending litigation in Suit 172 and Suit 166 concerning the very same parcels of land. They submit that the liquidator acted prematurely in entering the agreement while those suits remain unresolved.

[20] More significantly, the applicants argue that the liquidator failed to seek sanction from the court or the committee of inspection, as required under s 486(1)(b) read with Part II of the Twelfth Schedule. Item 13 of that Schedule expressly requires court sanction for any compromise or arrangement with

creditors or contributories or any other action that may affect their rights. The applicants maintain that the Turnkey agreement — while styled as a construction contract — is in effect a substantive disposition of disputed assets.

[21] The liquidator did not furnish any evidence that directions were sought, nor was there consultation with stakeholders. His justification that the agreement was necessary to realise value for the creditors does not address the fact that the underlying assets are subject to competing claims. His decision to proceed unilaterally in these circumstances reflects an injudicious exercise of discretion.

[22] On the totality of the evidence, I find that the liquidator's execution of the Turnkey agreement was irregular and in breach of his statutory obligations under s 486. The transaction undermines the integrity of the pending litigation and is prejudicial to the rights of potential beneficiaries of those suits. I therefore find it appropriate to declare that the Turnkey agreement is null, void, and unenforceable.

Injunctive relief

[23] The applicants further seek a permanent injunction to restrain both the liquidator and KIP from taking further steps to implement the Turnkey agreement. They argue that if the agreement is declared void, then injunctive relief is necessary to preserve the status quo and prevent irreversible harm. They stress that absent an injunction, the liquidator and KIP could proceed with construction or development work, which would irreparably alter the nature of the assets in dispute.

[24] The threshold for granting a permanent injunction is whether the applicants have established a legal or equitable right, and whether damages would be an inadequate remedy. In the present case, I have found that the Turnkey agreement is void. As such, any steps to implement it would be unlawful. Moreover, the subject matter of the dispute is land — a form of property for which damages are not always adequate.

[25] On this basis, I find it just and proper to grant a permanent injunction restraining the liquidator from giving effect to the Turnkey agreement. Although KIP was not named as a party to the application, it has been heard and is aware of the implications of the injunctive relief sought. Since no specific wrongdoing is attributed to KIP and it is not compelled to perform or refrain from an act personally, the order will not be made against it. The injunction is directed solely against the liquidator.

A CONCLUSION

[26] For the reasons set out above, I allow the application in encl 1 and make the following orders:

B (a) a declaration that the Turnkey construction agreement dated 28 March 2023 is null, void, and unenforceable;

(b) a permanent injunction restraining the liquidator from taking any further steps to implement or give effect to the agreement;

C (c) a permanent injunction restraining the liquidator from disposing of, transferring, or otherwise dealing with the 33 parcels of land referred to in the agreement;

(d) no order is made against Kuala Ibai Property Sdn Bhd; and

D (e) costs are awarded to the applicants to be paid by the respondent, for the sum of RM10,000.

Application allowed.

E Reported by Nabilah Syahida Abdullah Salleh

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